



FILE COPY

Office - Supreme Court, U. S.
FILED

SEP 7 1938

SUPREME COURT OF THE UNITED STATES

WALTER L. DROPLEY
CLERK

OCTOBER TERM, 1938

No. 276

CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.,

Appellants,

vs.

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLISHERS, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE NORTHERN DISTRICT OF FLORIDA.

ANSWER OF APPELLANTS TO MOTION TO VACATE
DECREE AND DIRECT DISMISSAL OF BILL OF
COMPLAINT.

THOMAS G. HAIGHT,

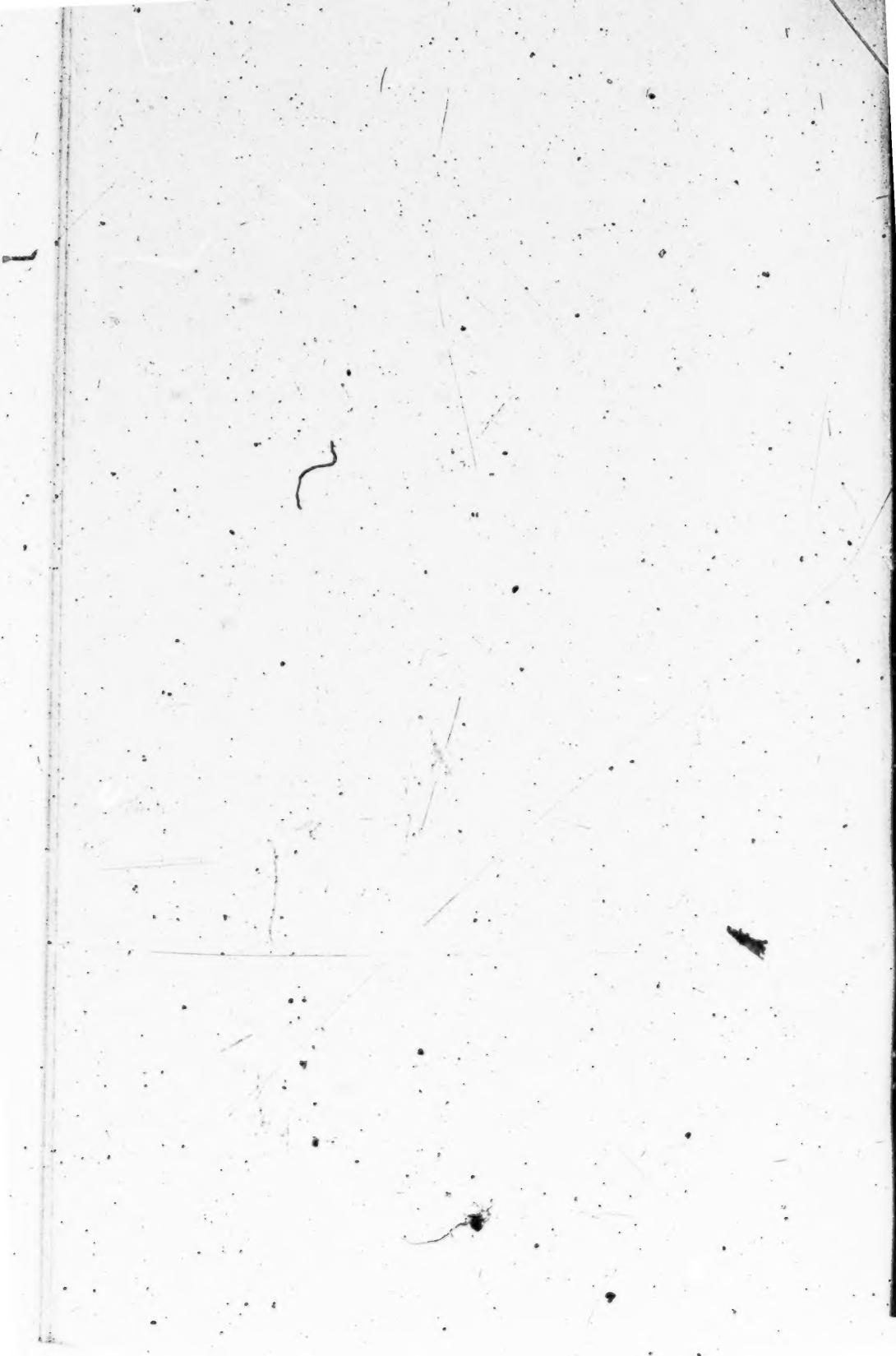
FRANK J. WIDEMAN,

LOUIS D. FROHLICH,

HERMAN FINKELSTEIN,

MANLEY P. CALDWELL,

Counsel for Appellees.



INDEX.

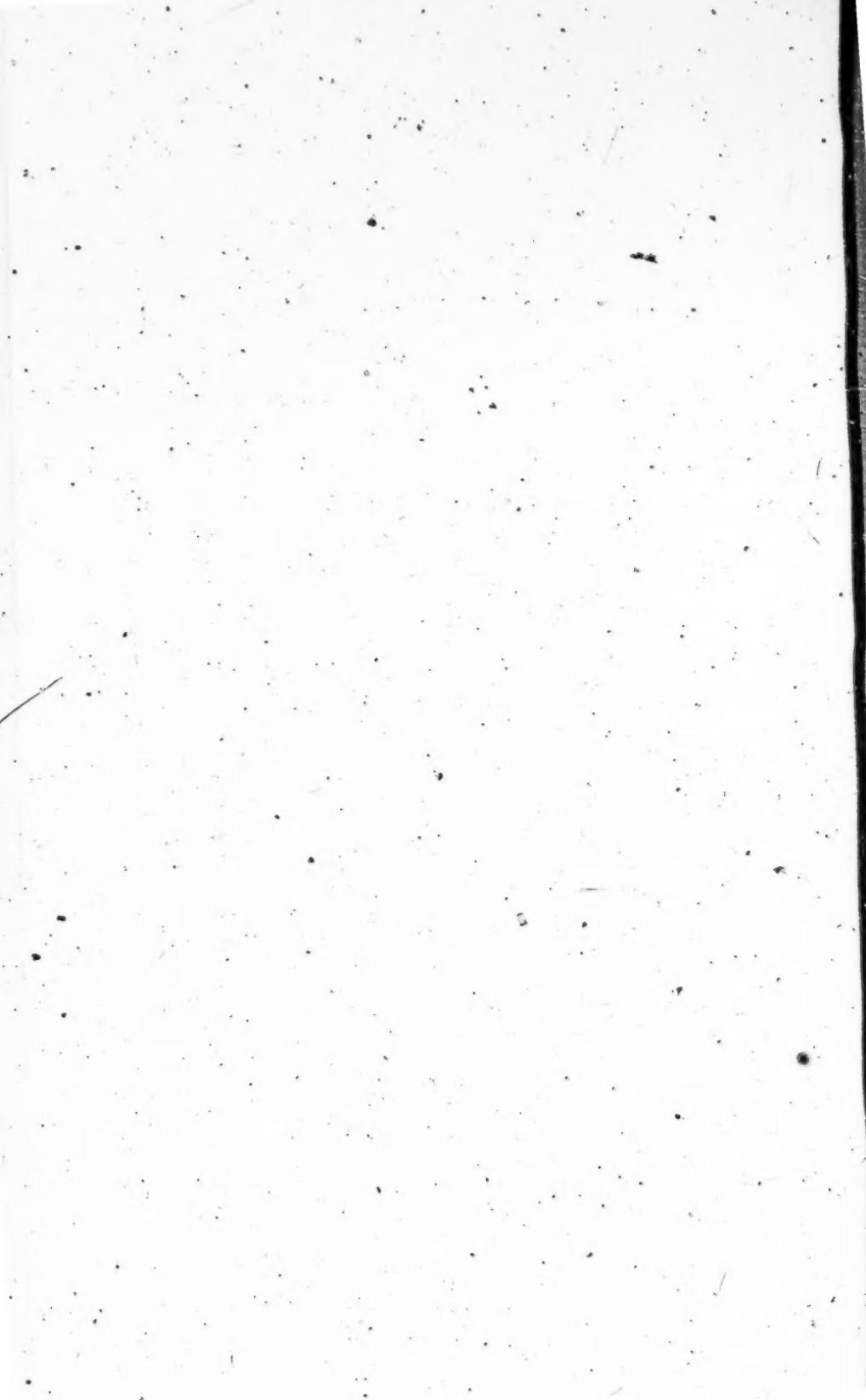
SUBJECT INDEX.

Appellees answer to motion to vacate decree and direct dismissal of bill of complaint	Page 1
Exhibit "1"—Supplemental bill of complaint	9
Exhibit "2"—Motion for extension of temporary injunction to include George Couper Gibbs	14
Exhibit "3"—Proof of service	18
Exhibit "4"—Notice of hearing	20
Exhibit "5"—Letter of the Assistant Attorney General of Florida to the Three-Judge Court	24

CASE CITED.

Allen v. Regents of University, 58 Sup. Ct. Rep. 980. 8

STATUTES CITED.



SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1938

No. 276

CARY D. LANDIS, INDIVIDUALLY AND AS ATTORNEY GENERAL
OF THE STATE OF FLORIDA, ET AL.,

vs.

Appellants,

GENE BUCK, INDIVIDUALLY AND AS PRESIDENT OF THE
AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND PUBLI-
LISHERS, ET AL.,

Appellees.

**ANSWER OF APPELLEES TO MOTION OF APPEL-
LANT STATE'S ATTORNEYS TO VACATE DECREE
AND DIRECT DISMISSAL OF BILL OF COMPLAINT.**

Appellees Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa answering the motion of appellant State's Attorneys to vacate the decree of the lower court and direct the District Court for the Northern District of Florida to dismiss the bill of complaint, heretofore filed in this cause for want of the necessary party, respectfully show:

1. Admit the correctness of all the exhibits annexed to appellants' moving papers, but allege that such exhibits are

incomplete and that the hearing mentioned and described in paragraph "4" of the motion was held upon a number of papers material to the consideration of this motion which are not included in, referred to, or annexed to the moving papers herein, and which will be hereinafter set forth and described.

2. After the appellants filed in the District Court the suggestion of death and the motion to dismiss (Exhibits "A" and "B" annexed to the moving papers), appellees on June 27, 1938, served upon George Couper Gibbs, individually and as Attorney General of the State of Florida and upon the attorneys for the appellants, copies of a proposed supplemental bill of complaint, a copy of which is annexed hereto and marked Exhibit "1".

3. Prior to said date, to wit, on June 24, 1938, appellees also caused to be served upon appellants a motion for leave to file such supplemental bill, copy of which is annexed to appellants' moving papers as Exhibit "C" thereof.

4. On June 27, 1938, appellees also caused to be served upon appellants a motion to extend the interlocutory injunction theretofore granted against appellants, including Cary D. Landis, deceased, to include his successor in office George Couper Gibbs, copy of which is annexed hereto as Exhibit "2".

5. A copy of the proof of service of the foregoing papers (Exhibits "1" and "2" hereto annexed, and Exhibit "C" annexed to appellant's moving papers) is annexed hereto as Exhibit "3".

6. On July 2, 1938, appellees caused to be served upon appellants and upon George Couper Gibbs, individually and as Attorney General of the State of Florida and upon Fred P. Cone, as Governor of the State of Florida, a notice, notifying such parties that a hearing would be held on July 11,

1938, on appellees' motion for leave to file a supplemental bill of complaint in the form annexed to said notice, copy of which supplemental bill had theretofore been served on the attorneys for appellants, and that at such hearing appellees would move for an order extending the temporary injunction theretofore entered against the appellants to include and restrain George Couper Gibbs, individually and as Attorney General of the State of Florida, in place of and to the same extent as his predecessor in office Cary D. Landis was enjoined by the interlocutory injunction order entered on April 5, 1938. A copy of such notice is annexed hereto as Exhibit "4".

7. On July 11, 1938, the appellants other than Cary D. Landis again served upon appellees their objections to the plaintiffs' motion for leave to file supplemental bill they had previously served on June 27, 1938. A copy of such objections is annexed to the appellants' moving papers as Exhibit "E".

8. At the same time, to wit, July 11, 1938, George Couper Gibbs served upon counsel for appellees his special appearance and objections to being made a party defendant to the cause, together with the copy of his affidavit verified July 9, 1937, copy of which is annexed to appellants' moving papers as Exhibit "D".

9. After hearing the parties on all the papers aforesaid, the United States District Court for the Northern District of Florida, consisting of Honorable Rufus E. Foster, United States Circuit Judge, Honorable Louie W. Strum, United States District Judge and Honorable A. V. Long, United States District Judge, made and entered an order on July 11, 1938 denying the appellant State's Attorneys' motion to dismiss, on the ground that they "are necessary parties defendant to the suit and, therefore, the cause did not abate as to them upon the death of said Honorable Cary

D. Landis"; and also denying appellees' motion for leave to file supplemental bill substituting George Couper Gibbs in place of Cary D. Landis, the court stating:

"the supplemental bill, for which leave to file is asked, in effect substitutes Honorable George Couper Gibbs as a party defendant in the place of Honorable Cary D. Landis, deceased. On authority of *ex parte* LaPrade, 289 U. S. 444, said motion is denied."

A copy of this order is annexed to appellants' moving papers as Exhibit "F".

10. Appellees deny each and every allegation contained in paragraph "5" of appellants' motion, and allege that the State's Attorneys are necessary parties to this suit, inasmuch as the State Statute (Chapter 17807, Laws of Florida, 1937—Exhibit "G" annexed to appellants' motion) actually requires the State's Attorneys to enforce the Statute, although it imposes a further requirement that they do so under the direction of the Attorney General. This appears from both the title of the Statute (moving papers, p. 17) and Section 9 (moving papers, p. 25), as well as Section 10-B (moving papers, p. 25).

11. The provision that the State's Attorneys shall act under the direction of the Attorney General was merely surplusage in this Statute, inasmuch as the laws of the State of Florida require the State's Attorneys in all cases to act under the direction of the Attorney General. Section 131, Compiled General Laws of Florida, provides:

"131. (107). To have superintendence and direction of State attorneys.—The Attorney-General shall exercise a general superintendence and direction over the several State attorneys of the several circuits as to the manner of discharging their respective duties, and whenever requested by the State attorneys, shall give them his opinion upon any question of law. (Ch. 2098, Feb. 27, 1817, § 1.)"

12. Notwithstanding Section 131 quoted above, it is common knowledge that the several State's Attorneys of the State of Florida do not await the specific direction of the Attorney General in enforcing the statutes of the State of Florida, and that the purpose of Section 131 of the Compiled General Laws and of Section 9 of the State Statute is to compel the State's Attorneys to obey the instructions of the Attorney General when such specific instructions are given. In the absence of specific instructions, each of the State's Attorneys proceeds on the theory that it is his duty to enforce the law in the first instance, as required by Section 4739 of the Compiled General Laws of Florida, describing the general duties of the State Attorney as follows:

"4739. (3005). *Before the court itself.*—It shall be his duty to appear in the circuit court within his judicial circuit, and prosecute or defend on behalf of the State all suits, applications or motions, civil or criminal, in which the State is a party. (Ch. 1661, Aug. 6, 1868, § 3.)"

13. The appellant State's Attorneys are clearly necessary parties to this suit, since the State Statute does not empower the Attorney General to bring any proceeding thereunder, and vests in the Attorney General only the power to direct the State's Attorneys to enforce the Statute, but primarily vests the duty of enforcement upon the appellant State's Attorneys themselves.

14. If appellant's motion should be granted, appellees will be compelled to refrain from continuing their business in the State of Florida because the fines, imprisonment, penalties and forfeitures which appellees will suffer if they violate the State Statute are so enormous and severe that appellees cannot risk violation of the Statute, pending resort to the courts to test its validity.

15. The late Attorney General of the State of Florida, Cary D. Landis, one of the defendants below, then acting

through his assistant Attorney General, Tyrus A. Norwood, on March 7, 1938, wrote to the three-judge court below that "if the Society known as the American Society of Composers, Authors and Publishers should bring suit in the Federal Court for infringement, or a suit on any of the licenses which it has issued, the Attorney General and State's Attorneys would be compelled to prosecute it under the provisions of Section 1 of the Act, regardless of whether the suit was brought in the State or Federal Courts". A copy of that letter is annexed hereto as Exhibit "5".

16. Said Tyrus A. Norwood has continued to act in the same capacity on behalf and as representative of the present Attorney General of the State of Florida, George Couper Gibbs, as he did on behalf and as representative of the late Cary D. Landis; and said Tyrus A. Norwood, in his capacity as Assistant to Attorney General George Couper Gibbs, and on information and belief acting under instructions from him, has continued to appear in this action, and now appears on behalf of the appellant State's Attorneys.

17. Said George Couper Gibbs, directly and through his representative and assistant Tyrus A. Norwood, proposes to continue the same course of conduct in the enforcement of this State Statute that was adopted by his predecessor in office, Cary D. Landis, as appears from his affidavit of July 9th in opposition to appellees' motion to make him a party to this cause, wherein he states: "based upon an investigation of the affairs of the office of my said predecessor, I am informed and believe that all such allegations [that Cary D. Landis threatened to enforce the State Statute] are unfounded and untrue" (Exhibit "D" annexed to appellants' motion papers, p. 12).

18. Upon information and belief, George Couper Gibbs was familiar with the letter of his predecessor, Exhibit

"5" hereto annexed, when that statement was made, and proposes likewise to direct said attorneys to prosecute complainants if the pending interlocutory injunction against them is vacated.

19. The said George Couper Gibbs also stated in said affidavit, Exhibit "D", that "I have never threatened to enforce said State statute or any provision thereof at any time, either against the plaintiffs in said suit or any other persons whomsoever, either upon the contingencies referred to in said supplemental bill or otherwise; nor am I now making such threats or any of them; nor have I directed or authorized any of the parties defendant to said cause to take or to threaten to take any such action against any person, firm, association, or corporation whomsoever" (pp. 12-13). The said George Couper Gibbs did not, however, deny his intention to prosecute complainants under the State Statute if the pending temporary injunction should be vacated. On information and belief he proposes to so prosecute complainants if such temporary injunction should be vacated by the dismissal of this suit, as prayed for by his assistant, said Tyrus A. Norwood. The said George Couper Gibbs makes no suggestion that he believes the State Statute to be unconstitutional, nor does he say that he will not enforce the Statute.

20. Appellees are renewing in this Court and are filing their motion to substitute George Couper Gibbs, individually and as Attorney General of the State of Florida in the place and stead of Cary D. Landis, deceased, on the ground that he has adopted and continues and threatens to adopt and continue the action of his predecessor in enforcing the State Statute, which is in violation of the Constitution of the United States, and that there is a substantial need for

continuing and maintaining this suit against said George Couper Gibbs and against the defendant State's Attorneys.

Allen v. Regents of University, 58 Sup. Ct. 980; 28 U. S. C. A. § 780; Rule 25, subd. (d) of new Rules of Civil Procedure.

21. The motion of appellant State's Attorneys to vacate the decree of the United States District Court for the Northern District of Florida, and to direct that court to dismiss the bill of complaint heretofore filed in this Court for want of the necessary party should be denied.

THOMAS G. HAIGHT,
FRANK J. WIDEMAN,
LOUIS D. FROHLICH,
HERMAN FINKELSTEIN,
MANLEY P. CALDWELL,

Counsel for Appellees.

EXHIBIT "1".

UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF FLORIDA, GAINESVILLE DIVI-
SION.

EQUITY No. 12.

GENE BUCK, Individually and as President of the Ameri-
can Society of Composers, Authors and Publishers; CARL
FISCHER, INC., G. SCHIRMER, INC., IRVING BERLIN, INC.,
DEEMS TAYLOR, OLEY SPEAKS, WILLIAM J. HILL, ANNE
PAUL NEVIN, ELLA HERBERT BARTLETT and JANE SOUSA,
Complainants,

against

GEORGE COUPER GIBBS, Individually and as Attorney General of the State of Florida; E. DIXIE BEGGS, JR., Individually and as State Attorney for the First Judicial Circuit of Florida; O. C. PARKER, JR., Individually, and as State Attorney for the Second Judicial Circuit of Florida; A. K. BLACK, Individually, and as State Attorney for the Third Judicial Circuit of Florida; WILLIAM A. HALLOWES, III, Individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. HUNTER, Individually and as State Attorney for the Fifth Judicial Circuit of Florida; CHESTER B. McMULLEN, Individually and as State Attorney for the Sixth Judicial Circuit of Florida; MURRAY SAMS, Individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. ADKINS, Individually and as State Attorney for the Eighth Judicial Circuit of Florida; MURRAY W. OVERSTREET, Individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. GRADY BURTON, Individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. WORLEY, Individually and as State Attorney for the Eleventh Judicial Circuit of Florida; ROY D. STUBBS, Individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. REX FARRIOR, Individually and as State Attorney for the Thirteenth Judicial Circuit of Flo-

rida; JOHN H. CARTER, JR., Individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; LOUIS F. MAIRE, Individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; "JOHN DOE" and "RICHARD ROE", Defendants.

Supplemental Bill of Complaint.

The complainants, Gene Buck, individually and as President of the American Society of Composers, Authors and Publishers, Carl Fischer, Inc., G. Schirmer, Inc., Irving Berlin, Inc., Deems Taylor, Oley Speaks, William J. Hill, Anne Paul Nevin, Ella Herbert Bartlett and Jane Sousa, by their undersigned counsel, bring this their supplemental bill of complaint herein, by leave of Court first had and obtained, against George Couper Gibbs, individually and as Attorney General of the State of Florida, and the other defendants named in the caption hereinabove, and say:

1. Since the filing of the original bill of complaint herein, certain material facts have occurred, as are hereinafter alleged.
2. On the 3rd day of March, 1938, this cause came on for hearing before a Statutory Three Judge Court, upon the application of the complainants for an interlocutory injunction, and the motion of the defendants to dismiss the bill of complaint. On the 5th day of April, 1938, the Court entered an order granting the application for an interlocutory injunction, enjoining the defendants from enforcing said statute, and denying the motion of the defendants to dismiss the bill of complaint.
3. On the 25th day of April, 1938, the defendants petitioned for the allowance of an appeal from said order of April 5th, 1938, to the Supreme Court of the United States, which said appeal was allowed, and is now pending.
4. Thereafter, on the 10th day of May, 1938, the defendant, Cary D. Landis, who was named a party defendant in said action, individually and as Attorney General of the State of Florida, departed this life, and on the 16th day of May, 1938, George Couper Gibbs became, and is now, the

duly appointed, qualified and acting Attorney General of the State of Florida. Said George Couper Gibbs is a citizen and resident of the State of Florida.

5. Said George Couper Gibbs, individually and as Attorney General of the State of Florida, has adopted and continues the action of his predecessor, Cary D. Landis; as alleged in the original bill of complaint herein, in enforcing the State Statute described in the said bill of complaint, Senate Bill No. 679 of the Acts of Florida for 1937, and is required by said State Statute to enforce the same, and said George Couper Gibbs is threatening to proceed to enforce said State Statute; that said George Couper Gibbs, individually and as an official charged with the duties of enforcing said State Statute, has threatened to, and will, enforce said State Statute in each and all of its terms, and the whole thereof, and particularly against these complainants and others similarly situated, individually and as members of the Society, in the event that such complainants and others similarly situated refused to accept or submit to a system of compulsory licensing; and said George Couper Gibbs has threatened to enforce the penal and confiscatory provisions of such Statute against complainants and others similarly situated in the event complainants and others similarly situated attempt to enforce the existing contracts between themselves and the Society and between the Society and citizens and residents of the State of Florida; or license or attempt to license persons, firms or corporations to publicly perform outside of the State of Florida musical compositions, which performances may be reproduced and re-performed within the State of Florida; or enter into license agreements without the State of Florida with residents or citizens of that State for the right or license to perform publicly for profit the musical compositions of the complainants and others similarly situated within the State of Florida; or enter into license agreements within the State of Florida with persons, firms or corporations, residents or citizens of that State, for the purpose of licensing them to publicly perform for profit the musical compositions of complainants and others similarly situated within or without the State of Florida; or take

any means to detect infringements of their copyrighted musical works within the State of Florida; or bring any suits for infringement of their copyrights in their respective compositions by means of public performances for profit in the Federal Courts within or without the State of Florida; or fail or refuse to submit to the jurisdiction of the State Courts of Florida; and said George Couper Gibbs has threatened in the event of the aforesaid contingencies, or any of them, to enforce the penalties provided for in said State Statute, and to proceed to prosecute complainants and others similarly situated, their employees and agents, criminally, for an alleged violation of said Statute.

Therefore, the complainants pray:

1. That a supplemental writ of subpoena may issue to the said George Couper Gibbs, individually and as Attorney General of the State of Florida, made a party defendant hereto, requiring him to answer the bill of complaint and this supplemental bill of complaint, fully and truthfully, but not on oath, an oath being hereby waived.
2. That said George Couper Gibbs, individually and as Attorney General of the State of Florida, be enjoined and restrained by temporary and permanent order of injunction of this Court, from bringing, directly or indirectly, and from permitting to be brought, directly or indirectly, any proceeding at law or in equity for the purpose of enforcing said State Statute, against the complainants and others similarly situated, representatives, employees, agents or any of them, and from interfering with all existing contracts entered into between complainants and others, including the Society and citizens and residents of the State of Florida, and from threatening to enforce against any citizens or residents of the State of Florida, the penalties of said Statute in the event such citizens and residents desire to carry out their contracts with Society or complainants and others similarly situated, and from prosecuting criminally the complainants, their representatives or agents, or any of them, or others similarly situated, for doing any act or thing to detect infringement and to enforce their respective rights under the Copyright Act in the Fed-

eral Courts of the State of Florida or elsewhere, and generally, from doing any act or thing to carry out or enforce any of the provisions of said State Statute; and that an order to show cause issue herein upon the application of the complainants, directed to the above named defendants, and each of them, requiring them to show cause why a temporary injunction against said George Couper Gibbs, individually and as Attorney General of the State of Florida, should not issue as prayed for herein.

3. That said State Statute, and each and every part and section thereof, be declared, as to said George Couper Gibbs, individually and as Attorney General of the State of Florida, to be unconstitutional, illegal and void, and that a perpetual injunction be issued restraining the enforcement of said State Statute, and each and every part and section thereof, by said George Couper Gibbs, individually and as Attorney General of the State of Florida, as hereinabove prayed for.

4. That further and general relief be granted as the nature of the complainants' case may require, or to equity may seem just and proper.

WIDEMAN, WARDLAW & CALDWELL,
Solicitors for Complainants.

FRANK J. WIDEMAN,
Of Counsel.

MANLEY P. CALDWELL,
Of Counsel.

STATE OF NEW YORK;
County of New York, ss:

Gene Buck, being duly sworn, deposes and says:

That he is one of the complainants in the above entitled action;

That he has read the foregoing Supplemental Bill of Complaint, and knows the contents thereof, and is fully familiar with the facts stated therein; that the same is true to his own knowledge, except as to the matters therein stated to be

alleged upon information and belief, and that as to those matters he believes them to be true.

GENE BUCK.

Subscribed and sworn to before me this 20th day of June, 1938.

BELLE G. BALATOW,
Notary Public, State of New York.

Queens Co. Clk's No. 66, Reg. No. 14.
N. Y. Co. Clk's No. 132, Reg. No. 0B117.
Kings Co. Clk's No. 222, Reg. No. 310.
Bronx Co. Clk's No. 31, Reg. No. 113B40.
My commission expires — — —

EXHIBIT "2".

UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF FLORIDA, GAINESVILLE DIVI-
SION.

EQUITY No. 12.

GENE BUCK, Individually and as President of the American Society of Composers, Authors and Publishers; CARL FISCHER, INC., G. SCHIRMER, INC., IRVING BERLIN, INC., DEEMS TAYLOR, OLEY SPEAKS, WILLIAM J. HILL, ANNE PAUL NEVIN, ELLA HERBERT BARTLETT and JANE SOUSA, *Complainants,*

against

GEORGE COUPER GIBBS, Individually and as Attorney General of the State of Florida; E. DIXIE BEGGS, JR., Individually and as State Attorney for the First Judicial Circuit of Florida; O. C. PARKER, JR., Individually and as State Attorney for the Second Judicial Circuit of Florida; A. K. BLACK, Individually, and as State Attorney for the Third Judicial Circuit of Florida; WILLIAM A. HALLIWES, III, Individually, and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. HUNTER, Individually and as State Attorney for the Fifth Judicial Circuit of Florida; CHESTER B. McMULLEN, Individually and as State Atto-

ney for the Sixth Judicial Circuit of Florida; MURRAY SAMS, Individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. ADKINS, Individually and as State Attorney for the Eighth Judicial Circuit of Florida; MURRAY W. OVERSTREET, Individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. GRADY BURTON, Individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. WORLEY, Individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Roy D. STUBBS, Individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. REX FAPRIOR, Individually and as State Attorney for the Thirteenth Judicial Circuit of Florida; JOHN H. CARTER, JR., Individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; LOUIS F. MAIRE, Individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; "JOHN DOE" and "RICHARD ROE", *Defendants.*

**Motion for Extension of Temporary Injunction to Include
George Couper Gibbs.**

Now come the complainants in the above entitled cause, by their undersigned counsel, and move the Court for an order enjoining the defendant George Couper Gibbs, individually and as Attorney General of the State of Florida, as hereinafter prayed for, and for other and further relief in the above entitled cause, and say:

1. On the 7th day of February, 1938, complainants filed their bill of complaint, and motion for interlocutory injunction and affidavits in support thereof in this Court against defendants Cary D. Landis, individually and as Attorney General of the State of Florida and the various States Attorneys for the respective judicial circuits in the State of Florida for an injunction, interlocutory and permanent, enjoining the defendants from enforcing Senate Bill 679 of the Acts of Florida for 1937, and for the purpose of having said Statute declared unconstitutional, null and void.
2. Thereafter, on the 3rd day of March, 1938 this cause came on for hearing before a Statutory three Judge Court,

upon the application of the complainants for an interlocutory injunction, and the motion of the defendants to dismiss the bill of complaint. On the 5th day of April, 1938, the Court entered an order granting the application for an interlocutory injunction enjoining the defendants from enforcing said Statute and denying the motion of the defendants to dismiss the bill of complaint.

3. On the 25th day of April, 1938, the defendants petitioned for the allowance of an appeal from said order of April 5, 1938, to the Supreme Court of the United States, which said appeal was allowed and is now pending.

4. Thereafter, on the 10th day of May, 1938, the defendant Cary D. Landis, who was named a party defendant in said action, individually and as Attorney General of the State of Florida departed this life, and on the 16th day of May, 1938 George Couper Gibbs became and is now the duly appointed, qualified and acting Attorney General of the State of Florida.

5. Said George Couper Gibbs, individually and as Attorney General of the State of Florida has adopted the action of his predecessor in office, the said Cary D. Landis, in threatening to enforce said Statute, alleged to be in violation of the Constitution of the United States. In order to protect the Constitutional rights of the complainants from an invasion by said George Couper Gibbs, it became necessary that complainants file a supplemental bill of complaint, duly verified June 20, 1938, adding said George Couper Gibbs as a party defendant to this suit with allegations concerning his actions with reference to said State Statute, and seeking the same relief against him as was sought in the original bill of complaint against said Cary D. Landis and the other defendants, and seeking the issuance of a supplemental subpoena directed to said George Couper Gibbs; that by reason of the foregoing facts and by reason of the facts in the supplemental bill of complaint herein, which are repeated with the same force and effect as if herein set forth in full, there is a substantial need for continuing and maintaining the interlocutory injunction heretofore entered herein against said George Couper Gibbs, individually and

as Attorney General of the State of Florida, and to bind him by said interlocutory injunction to the same extent as his predecessor, Cary D. Landis was bound thereby, and to continue said interlocutory injunction against the defendants States Attorneys.

WHEREFORE, the complainants move the Court for the entry of an order granting an interlocutory injunction *pendente lite* restraining the defendant George Couper Gibbs, individually and as Attorney General of the State of Florida from proceeding against the complainants, and others similarly situated, their officers, employees or agents by criminal prosecution, and restraining said defendant from requiring the complainants and others similarly situated to affix to copies of their copyrighted musical compositions a fixed price for all uses of their respective works, and from interfering with all existing contracts entered into between complainants and others, including citizens and residents of the State of Florida, and from threatening to enforce against any citizens or residents of the State of Florida, the penalties of said State Statute, in the event such citizens and residents desire to carry out their contracts with complainants, and from taking any steps instituting any actions or proceedings or doing anything for the purpose of enforcing said State Statute; and for an order continuing the interlocutory injunction heretofore entered herein as against the defendants E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida, O. C. Parker, Jr., individually and as State Attorney for the Second Judicial Circuit of Florida, A. K. Black, individually, and as State Attorney for the Third Judicial Circuit of Florida, William A. Hallowes, III, individually and as State Attorney for the Fourth Judicial Circuit of Florida, J. W. Hunter, individually and as State Attorney for the Fifth Judicial Circuit of Florida, Chester B. McMullen, individually and as State Attorney for the Sixth Judicial Circuit of Florida, Murray Sams, individually and as State Attorney for the Seventh Judicial Circuit of Florida, J. C. Adkins, individually and as State Attorney for the Eighth Judicial Circuit of Florida, Murray W. Overstreet, individually and as State Attorney for the Ninth Judicial Cir-

cuit of Florida, L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida, G. A. Worley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida, Roy D. Stubbs, individually and as State Attorney for the Twelfth Judicial Circuit of Florida, J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of Florida, John H. Carter, Jr., individually and as State Attorney for the Fourteenth Judicial Circuit of Florida, Louis F. Maire, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida, individually and as respective States Attorneys, and extending such interlocutory injunction to include, be applicable to and to restrain the defendant George Couper Gibbs, individually and as Attorney General of the State of Florida, to the same extent as the late Cary D. Landis, individually and as Attorney General of the State of Florida was enjoined by said interlocutory injunction.

WIDEMAN, WARDLAW & CALDWELL,
MANLEY P. CALDWELL, *Solicitors for Complainants.*
Of Counsel.

EXHIBIT "3".

IN THE UNITED STATES DISTRICT COURT,
NORTHERN DISTRICT OF FLORIDA, GAINES-
VILLE DIVISION.

EQUITY No. 12.

GENE BUCK, Individually and as President of the American
Society of Composers, Authors and Publishers, *et al.*,
Complainants, v.

CARY D. LANDIS; Individually and as Attorney General of
the State of Florida, *et al.*, *Defendants.*

Proof of Service.

STATE OF FLORIDA,

County of Palm Beach, ss:

This day personally appeared before me, a notary public duly authorized to administer oaths, Manley P. Caldwell,

who being first duly sworn, deposes and says that he is a member of the firm of Wideman, Wardlaw & Caldwell, solicitors for the complainants in the above styled cause, and is an attorney for said complainants; that on the 24th day of June, 1938, he deposited in the United States mail, in an envelope securely sealed, and with sufficient postage thereunto attached, three (3) true copies of complainants' motion for leave to file supplemental bill, which said motion was filed herein on July 11, 1938, said envelope being addressed to Hon. Tyrus A. Norwood, Assistant Attorney General, Tallahassee, Florida; that on June 27, 1938, he served true copies of supplemental bill of complaint, and motion for extension of temporary injunction, upon Hon. George Couper Gibbs, Attorney General of the State of Florida; Hon. Tyrus A. Norwood, Assistant Attorney General; Lucien H. Boggs, Esq., and Andrew W. Bennett, Esq., the three last named being attorneys for the defendants herein, by delivering, in person, at Gainesville, Florida, true copies of said supplemental bill of complaint and motion for extension of temporary injunction, to said Tyrus A. Norwood, the Assistant of said George Couper Gibbs, Attorney General, and to said Lucien H. Boggs. True copies of said supplemental bill of complaint and motion for extension of temporary injunction as so delivered and served, are hereto attached and made a part of this affidavit; that said Tyrus A. Norwood and Lucien H. Boggs did then and there receipt, for themselves and said Andrew W. Bennett, for copies of said supplemental bill of complaint, motion for leave to file supplemental bill of complaint, and motion for extension of temporary injunction, as appears from acknowledgment of service filed herein on July 11, 1938.

MANLEY P. CALDWELL.

Subscribed and sworn to before me this 2nd day of September, 1938.

F. D. MORRISH,
Notary Public, State
of Florida at Large.

My commission expires March 29, 1941.

EXHIBIT "4".

UNITED STATES DISTRICT COURT, NORTHERN
DISTRICT OF FLORIDA, GAINESVILLE DIVI-
SION.

Equity No. 12.

GENE BUCK, Individually and as President of the Ameri-
can Society of Composers, Authors and Publishers, *et al.*,
Complainants,

v.

CARY D. LANDIS, Individually and as Attorney General of
the State of Florida, *et al., Defendants.*

Notice of Hearing.

To Fred P. Cone, as Governor of the State of Florida; George Couper Gibbs, individually and as Attorney General of the State of Florida; E. Dixie Beggs, Jr., individually and as State Attorney for the First Judicial Circuit of Florida; O. C. Parker, Jr., individually and as State Attorney for the Second Judicial Circuit of Florida; A. K. Black, individually and as State Attorney for the Third Judicial Circuit of Florida; William A. Hallows, III, individually and as State Attorney for the Fourth Judicial Circuit of Florida; J. W. Hunter, individually and as State Attorney for the Fifth Judicial Circuit of Florida; Chester B. McMullen, individually and as State Attorney for the Sixth Judicial Circuit of Florida; Murray Sams, individually and as State Attorney for the Seventh Judicial Circuit of Florida; J. C. Adkins, individually and as State Attorney for the Eighth Judicial Circuit of Florida; Murray W. Overstreet, individually and as State Attorney for the Ninth Judicial Circuit of Florida; L. Grady Burton, individually and as State Attorney for the Tenth Judicial Circuit of Florida; G. A. Worley, individually and as State Attorney for the Eleventh Judicial Circuit of Florida; Roy D. Stubbs, individually and as State Attorney for the Twelfth Judicial Circuit of Florida; J. Rex Farrior, individually and as State Attorney for the Thirteenth Judicial Circuit of

Florida; John H. Carter, Jr., individually and as State Attorney for the Fourteenth Judicial Circuit of Florida; Louie F. Maire, individually and as State Attorney for the Fifteenth Judicial Circuit of Florida; "John Doe" and "Richard Roe":

You, and each of you, are hereby notified that the complainants in the above entitled cause will, on the 11th day of July, 1938, at 10:00 o'clock A. M., in the Courtroom in the Federal Building, at Pensacola, Florida, move Hon. Rufus E. Foster, United States Circuit Judge for the Fifth Circuit, Hon. A. V. Long, United States District Judge for the Northern District of Florida, and Hon. Louie W. Strum, United States District Judge for the Southern District of Florida, constituting a Special Statutory Court, under the provisions of Section 380, Title 28, of the United States Code, Annotated, as amended, for leave to file a supplemental bill of complaint in the above styled cause, in the form and for the purposes alleged in motion for leave to file supplemental bill of complaint, copy of which was delivered, on June 27, 1938, to Tyrus A. Norwood, Esq., Assistant Attorney General of the State of Florida, Lucien H. Boggs, Esq., and Andrew W. Bennett, Esq., solicitors and of counsel for the defendant State Attorneys in the above styled cause.

You, and each of you, are further notified that in the event said Court shall grant said motion, the complainants will, instanter, file their supplemental bill of complaint herein, supported by the affidavit of Gene Buck, annexed thereto, which said supplemental bill of complaint prays for a temporary and permanent injunction, restraining George Couper Gibbs, individually and as Attorney General of the State of Florida, from bringing directly, or indirectly, or permitting to be brought directly, or indirectly, any proceeding at law or in equity for the purpose of enforcing Senate Bill No. 679 of the State of Florida, enacted by the Legislature of the State of Florida, in its Regular Session held in the year 1937, approved by the Governor of the State of Florida, on June 9, 1937, and filed in the office of the Secretary of State of the State of Florida, on June 10, 1937, relating to the use of copyrighted songs

and music, against the complainants, or any of them, or against others similarly situated. A copy of said proposed supplemental bill of complaint was delivered on June 27, 1938, to Tyrus A. Norwood, Esq., Assistant Attorney General of the State of Florida, Lucien H. Boggs, Esq., and Andrew W. Bennett, Esq., solicitors and of counsel for the defendant State Attorneys.

You, and each of you, are further notified that, upon such filing of such supplemental bill of complaint, the complainants will, instanter, and before aforesaid Judges, and at said time and place, move the Court for a temporary injunction in the form of an interlocutory decree, restraining said George Couper Gibbs, as Attorney General of the State of Florida, as prayed in said supplemental bill of complaint, and extending the temporary injunction order heretofore entered in this cause on the 5th day of April, 1938, to be applicable to and to restrain the said George Couper Gibbs, individually and as Attorney General of the State of Florida, to the same extent as the late Cary D. Landis, individually and as Attorney General of the State of Florida, was enjoined by said interlocutory injunction, and continuing aforesaid injunction order of April 5th, 1938, against the other defendants in this cause. A copy of said motion for extension of temporary injunction was delivered, on June 27, 1938, to Tyrus A. Norwood, Esq., Assistant Attorney General of the State of Florida, Lucien H. Boggs, Esq., and Andrew W. Bennett, Esq., solicitors and of counsel for defendant State Attorneys.

You are further notified that the hearing upon complainants' said application for a temporary injunction will be held before the said three Judges at the aforesaid time and place, and that the same will be heard upon the supplemental bill of complaint, the bill of complaint, and the affidavits filed with said bill of complaint, and such other proof as may be submitted at said hearing, in accordance with the determination of the Court.

Dated this 2nd day of July, 1938.

WIDEMAN, WARDLAW & CALDWELL,

FRANK J. WIDEMAN, *Solicitors for Complainants.*

MANLEY P. CALDWELL,

Of Counsel.

STATE OF FLORIDA,
County of Palm Beach, ss:

This day personally appeared before me, a notary public duly authorized to administer oaths, Manley P. Caldwell, who being first duly sworn, deposes and says that he is a member of the firm of Wideman, Wardlaw & Caldwell, solicitors for the complainants in the above styled cause, and is an attorney for said complainants; that on the 2nd day of July, 1938, he deposited true copies of the above and foregoing Notice of Hearing in the United States mail, in envelopes securely sealed, and with sufficient postage thereunto attached, addressed to: Hon. Fred P. Cone, Governor of the State of Florida, Tallahassee, Florida; Hon. George Couper Gibbs, Attorney General of the State of Florida, Tallahassee, Florida; Tyrus A. Norwood, Esq., Assistant Attorney General, Tallahassee, Florida; Lucien H. Boggs, Esq., Bisbee Building, Jacksonville, Florida and Andrew W. Bennett, Esq., Attorney at Law, Washington, D. C., said three last named addressees being solicitors of record for the defendants State Attorneys, "John Doe", and "Richard Roe", herein.

MANLEY P. CALDWELL.

Subscribed and sworn to before me this 2nd day of July, 1938.

Z. E. BAMBERGER,
*Notary Public, State
 of Florida at Large.*

My commission expires June 17, 1942.

The undersigned respectfully acknowledge receipt of a copy of the above and foregoing Notice this 2nd day of July, 1938.

FRED P. CONE,
Governor of the State of Florida.
 GEORGE COUPER GIBBS,
*Attorney General of the
 State of Florida.*

EXHIBIT "5".

STATE OF FLORIDA,
Office of the Attorney General,
Tallahassee.

Honorable Rufus E. Foster,
Judge, United States Circuit
Court of Appeals,
New Orleans, Louisiana.

March 7, 1938

Re Gene Buck et al. vs. State of Florida et al.

DEAR JUDGE FOSTER:

Since returning from New Orleans I have been thinking that a statement I made before you in the argument of the above case to the effect that "if the plaintiffs in this case sued for an infringement of their copyrights in the Federal Courts within the State of Florida, that the Attorney General and State's Attorneys would not prosecute them" was not absolutely clear.

In order to be fair to the Court, I would like to state that what I meant by the above remark was that the Attorney General and the State's Attorneys of this State would not prosecute any of the individual complainants if they brought suit in the Federal Courts of this State against persons residing within the State for infringement of copyright, but if the Society known as the American Society of Composers, Authors and Publishers should bring suit in the Federal Court for infringement, or a suit on any of the licenses which it has issued, the Attorney General and State's Attorneys would be compelled to prosecute it under the provisions of Section 1 of the Act, regardless whether the suit was brought in the State or Federal Courts.

Yours very truly,

(Signed)

TAN-a.

CARY D. LANDIS,

Attorney General,
By TYRUS A. NORWOOD,
Assistant Attorney General.

CC: Hon. A. V. Long, Gainesville, Florida. Hon. Louis W. Strum, Jacksonville, Florida. Hon. Frank Wideman, West Palm Beach, Florida.

